

**United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 8, 2022

Hearing Room 1568

10:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

#1.00 Hearing
RE: [33] Motion to Abandon Property of Estate.

Docket 33

Tentative Ruling:

6/7/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Court will prepare and enter an order (1) finding that the JLA Claims cannot be administered by the Trustee because they are related to a marijuana asset, (2) declining to make any findings regarding whether the JLA Claims are an asset of the estate or whether the JLA Claims have been abandoned, and (3) immediately closing the case.

Pleadings Filed and Reviewed:

- 1) Memorandum of Decision Granting Motion to Reopen [Doc. No. 43]
- 2) Order: (1) Granting Motion to Reopen, (2) Directing the United States Trustee to Appoint Chapter 7 Trustee, and (3) Setting Hearing on Debtor's Motion to Reopen [Doc. No. 44]
- 3) Trustee's: (1) Statement Re Claims and Causes of Action Relating to Jason Lilly Association; and (2) Opposition to Debtor's Motion for Order Abandoning Property of Estate Related to Claims Against Jason Lilly Association and Jason Lilly, LLC Per 11 U.S.C. § 554(c) [Doc. No. 59]
- 4) Jason Lilly Association, Steve McKay, Michele McKay, Jason Lilly, Josiah Lilly, and Jason Lilly, LLC's Response to Chapter 7 Trustee's: (1) Statement Regarding Claims and Causes of Action Relating to Jason Lilly Association; and (2) Opposition to Abandonment Motion [Doc. No. 60]
- 5) Debtor's Response to Trustee Heide Kurtz's: (1) Statement Re Claims and Causes of Action Relating to Jason Lilly Association; and (2) Opposition to Debtor's Motion for Order Abandoning Property of the Estate Related to Claims Against

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Jason Lilly Association and Jason Lilly, LLC Per 11 U.S.C. § 554(c) [Doc. No. 62]

- 6) United States Trustee's Statement of Position on Debtor's Motion for an Order Abandoning Property Related to Claims Against Jason Lilly Association and Jason Lilly, LLC dba Kannabis Works [Doc. No. 63]
- 7) Jason Lilly Association, Steve McKay, Michele McKay, Jason Lilly, Josiah Lilly, and Jason Lilly, LLC's Opposition to Debtor's Response to Chapter 7 Trustee's: (1) Statement Regarding Claims and Causes of Action Relating to Jason Lilly Association; and (2) Opposition to Abandonment Motion [Doc. No. 64]
- 8) Jason Lilly Association, Steve McKay, Michele McKay, Jason Lilly, Josiah Lilly, and Jason Lilly, LLC's Reply and Response to United States Trustee's Statement of Position on Debtor's Motion for an Order Abandoning Property Related to Claims Against Jason Lilly Association and Jason Lilly, LLC dba Kannabis Works [Doc. No. 65]
- 9) Debtor's Response to United States Trustee's Statement of Position on Debtor's Motion for an Order Abandoning Property Related to Claims Against Jason Lilly Association and Jason Lilly, LLC dba Kannabis Works [Doc. No. 66]
- 10) Trustee's Supplemental Reply to Debtor's Opposition and United States Trustee's Statement of Position on Trustee's: (1) Statement Re Claims and Causes of Action Relating to Jason Lilly Association; and (2) Opposition to Debtor's Motion for Order Abandoning Property of Estate Related to Claims Against Jason Lilly Association and Jason Lilly, LLC Per 11 U.S.C. § 554(c) [Doc. No. 67]

I. Facts and Summary of Pleadings

Chasen Kyle Stanley (the "Debtor") filed a voluntary Chapter 7 petition on April 27, 2017. Doc. No. 1. On June 6, 2017, the Trustee issued a Report of No Distribution. Doc. No. 14. The Debtor received a discharge on August 14, 2017, and the case was closed on August 22, 2017. Doc. Nos. 19 and 21.

On April 26, 2018, upon the Debtor's motion, the Court reopened the case so that the Debtor could file amended schedules. Doc. No. 24 (the "First Reopening Order"). The First Reopening Order stated that "[n]o Chapter 7 trustee shall be appointed absent further order of this Court."

In his amended schedules, the Debtor disclosed an interest in several business entities, including "Jason Lilly Association, a non-profit association." Amended Schedule A/B [Doc. No. 26] at ¶ 42. In the column requiring him to specify his ownership interest in Jason Lilly Association ("JLA"), the Debtor stated "N/A." *Id.*

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The Debtor valued his interest in JLA at \$0.00. *Id.* In ¶ 33 of Schedule A/B—which requires debtors to list "claims against third parties, whether or not you have filed a lawsuit or made a demand for payment"—the Debtor did not schedule any causes of action related to his interest in JLA. *Id.* at ¶ 33. Notwithstanding the language in the First Reopening Order that "[n]o Chapter 7 trustee shall be appointed absent further order of this Court," on November 15, 2018, the Trustee issued a second Report of No Distribution. The case was re-closed on December 18, 2018.

On February 7, 2020, the Debtor filed a Complaint against Jason Lilly Association, Steve McKay, Michele McKay, Jason Lilly, Josiah Lilly, and Jason Lilly, LLC (collectively, the "JLA Parties") in the Orange County Superior Court (the "State Court Action," and the claims asserted in the State Court Action, the "JLA Claims"). The gravamen of the Complaint was that the JLA Parties had wrongfully ousted the Debtor from JLA. On June 30, 2020, the Debtor filed a First Amended Complaint. On November 23, 2020, the State Court sustained the JLA Parties' demurrer to the First Amended Complaint, but gave the Debtor leave to file a Second Amended Complaint. In sustaining the demurrer, the State Court found that the Debtor was judicially estopped from prosecuting his claims against the JLA Parties because he had failed to disclose those claims in his amended schedules and had valued his interest in JLA at \$0.00:

Here, [the JLA Parties] point out that [the Debtor] failed to mention not only his interest in JLA dba Kannabis Works, but also failed to mention the claims he allegedly possessed relating to his ouster (which occurred during the bankruptcy proceedings and before he filed his supplemental schedules/disclosures). [The Debtor] counters that the JLA dba Kannabis Works he was a partner in pre-petition was not the same JLA dba Kannabis Works he was a partner in post-petition because the prepetition version was operating as a non-profit whereas the post-petition version switched to a "for profit." This is a distinction without a legal difference. The entity remained the same, the EIN remained the same, and the location remained the same. The fact that it may have changed its tax basis does not mean it became an entirely new interest. The [Debtor's] 25% interest in the company never changed, just his hope for financial success. He did not disclose that interest in his initial filings, and, when he did disclose it in his supplemental filings, he claimed his 25% amounted to zero dollars. This representation left the trustee believing this was a no asset bankruptcy, and left his creditors with nothing. To be clear,

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the asset is his 25% interest in JLA dba Kannabis Works, which he acquired pre-petition and which he now claims to have serious value (despite claiming no value in his bankruptcy case). This is classic case for judicial estoppel.

State Court Ruling Sustaining JLA Parties' Demurrer to First Amended Complaint [Doc. No. 34, Ex. K, at 203–205 (page citations are to the CM/ECF pagination)].

On December 18, 2020, the Debtor filed the Second Amended Complaint. On May 10, 2020, the State Court sustained the JLA Parties' demurrer to the Second Amended Complaint, but again gave the Debtor leave to amend. The State Court explained:

[The Debtor's] characterization of underlying events has morphed through the course of the pleadings. In the original Complaint and in the First Amended Complaint, [the Debtor] alleged that the association with the individual defendants (Jason Lilly Association) was a continuous one; it was intended to open a cannabis dispensary as a nonprofit venture, and later it was decided to be a for-profit business—but it was the same association....

In the Second Amended Complaint, [the Debtor] alleges there were two fundamentally separate associations, each named Jason Lilly Association. One was formed in September 2015 to operate a dispensary in a nonprofit fashion, and one was formed in January 2018 to operate a dispensary as a for-profit enterprise. [The Debtor] seeks to draw a bright line between the two, treating them as independent business entities....

Although the court considered sustaining the demurrer without leave to amend, a new filing in Bankruptcy Court might cure the standing issue and actions taken by the Bankruptcy Court could shed light on issues, such as bad faith, which could be useful for the Court in exercising its equitable powers under judicial estoppel. As a result, the court will allow one additional opportunity to amend after any actions taken in the Bankruptcy Court.

State Court Ruling Sustaining JLA Parties' Demurrer to Second Amended Complaint [Doc. No. 34, Ex. M, at 255–56].

On January 27, 2022, upon the Debtor's motion, the Court entered an order reopening the case. Doc. No. 44 (the "Second Reopening Order"). The Debtor sought to reopen the case to obtain a ruling that the Trustee had already abandoned the estate's interest in the JLA Claims (the "Motion to Abandon"). In the Second

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Reopening Order, the Court (1) directed the UST to appoint a Trustee to investigate whether the JLA Claims constituted an asset of the estate; (2) directed the Trustee to file a statement (a) setting forth the Trustee's position as to whether the JLA Claims arose pre-petition or post-petition and, (b) if the JLA Claims arose post-petition, indicating whether the Trustee intended to administer the JLA Claims; and (3) set a briefing schedule on the Motion to Abandon.

The UST's position is that the Trustee may not administer the JLA Claims because they are related to a marijuana business, and "any litigation recovery entering the bankruptcy estate would constitute proceeds from a federally prohibited business." *Burton v. Maney (In re Burton)*, 610 B.R. 633, 640 (B.A.P. 9th Cir. 2020). The UST further asserts that "the Court should not issue any order related to abandonment or make any determination related to the administration of this asset by the estate, and just order the case closed." Doc. No. 63 at 4. According to the UST:

What is clear from both the Debtor's motion to abandon and JLA and related parties' collective opposition to abandonment, is that the purpose of Debtor's reopening this case a second time is to have a federal trustee determine whether or not to administer the litigation and to have a federal judge rule on whether to grant the Debtor's request for abandonment of the Debtor's purported interests in an enterprise whose purpose is to operate a cannabis business in violation of federal law. In other words, Debtor is seeking that the Court and the chapter 7 trustee confer a federal benefit related to an illegal asset....

The Debtor seeks relief from this Court so that he can pursue his litigation in state court related to a criminal enterprise, namely the retail sale of cannabis in violation of the Controlled Substances Act....

In addressing a very similar request by a debtor in a reopened case for the abandonment of previously undisclosed marijuana-related claims, the bankruptcy court in *Malul* determined to vacate the order reopening the case because the marijuana-related claims could neither be administered nor abandoned.... The trustee could not administer Malul's litigation claims, "as doing so would constitute administration of an illegal asset." *In re Malul*, 614 B.R. 699, 713 (Bankr. D. Colo. 2020). But allowing *Malul* to schedule the claims while also requiring the trustee to abandon them "would confer a federal benefit upon Malul while she is engaged in an ongoing violation of federal law." *Id.* at 713–14.

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Id. at 4 and 6–7.

The Trustee initially took the position that the JLA Claims are property of the estate with substantial value that should be administered for the benefit of creditors, but in view of the UST's position, the Trustee has revised his initial position, and does not oppose the issuance of an order immediately closing the case.

The Debtor argues that the JLA-entity that is the subject of the State Court Action is *not* the same as the JLA-entity that the Debtor disclosed in his Amended Schedule A/B [Doc. No. 26]. The Debtor asserts that the Court should find that the JLA Claims are *not* property of the estate, because the JLA-entity at issue in the State Court Action was not formed until after the Petition Date.

The JLA Parties agree with the UST that the case should be closed, but request that the Court enter an order (1) denying the Debtor's motion to abandon the JLA Claims, (2) finding that the Debtor has acted in bad faith and has made affirmative misrepresentations regarding assets of the estate, and (3) finding that the Trustee is the only party with standing to prosecute the JLA Claims.

II. Findings of Fact and Conclusions of Law

Under the Controlled Substances Act (the "CSA"), codified at 21 U.S.C. § 801 *et seq.*, it is unlawful for any person to knowingly or intentionally "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." 21 U.S.C. § 841(a)(1). Marijuana is a controlled substance for purposes of the CSA. Under the CSA, it is also unlawful for any person "to knowingly open, lease, rent, use or maintain any place" to manufacture or distribute a controlled substance. 21 U.S.C. § 856(a). Conspiracy to violate the CSA is a crime. 21 U.S.C. § 846. A person is engaged in a conspiracy when he or she knowingly agrees to engage in the distribution of marijuana with the intent to further that distribution. *United States v. Gil*, 58 F.3d 1414, 1423 (9th Cir. 1995).

The JLA Claims arise from an investment contract with a nexus to a marijuana business. As a result, the Trustee is barred from administering the JLA Claims. Any proceeds that the Trustee received from administration of the JLA Claims "would represent profits from a business that is illegal under federal law," and "any litigation recovery entering the bankruptcy estate would constitute proceeds from a federally prohibited business, regardless of whether or not the business was still engaged in activities prohibited by the CSA." *Burton v. Maney (In re Burton)*, 610 B.R. 633, 640 (B.A.P. 9th Cir. 2020).

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Having found that the Trustee is barred from administering the JLA Claims, the next question is whether it is appropriate for the Court to issue any order regarding (1) whether the JLA Claims are property of the estate, and (2) if the JLA Claims are property of the estate, whether the claims have been abandoned.

The facts of *In re Malul*, 614 B.R. 699 (Bankr. D. Colo. 2020), mirror the facts of this case. In *Malul*, the Debtor's case was reopened five years after it had been closed, and the Debtor disclosed a marijuana-related asset. The court found that federal law prohibited the Trustee from administering the marijuana-related asset. *Id.* at 714. The court also found that it would not be appropriate to allow Malul to schedule the marijuana-related asset while also requiring the Trustee to abandon it, because doing so "would confer a federal benefit upon Malul while she is engaged in an ongoing violation of federal law." *Id.* Therefore, the Court declined "to address whether Malul's litigation claims are property of the estate," finding instead that such issue should be decided by the State Court. *Id.*

As recommended by the UST, the Court will adopt the approach set forth in *Malul*, and will not make any findings regarding whether the JLA Claims are property of the estate or whether the JLA Claims have been abandoned. Any findings made by the Court as to these issues would have no effect whatsoever on the bankruptcy case, and in this sense would be akin to the issuance of an advisory opinion. The only effect that the Court's findings would have would be on the State Court Action.

Under the *Rooker-Feldman* doctrine, the Court has "no authority to review the final determinations of a state court in judicial proceedings." *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir.1986). The issuance of an order regarding whether the JLA Claims are property of the estate and whether such claims have been abandoned would not constitute the review of a final determination made by the State Court, but such an order would meaningfully affect the progress of the State Court Action. Consistent with the *Rooker-Feldman* doctrine, the Court finds it appropriate to refrain from issuing such an order where, as here, the order would have no effect on the bankruptcy case.

For the same reason, the Court declines to enter the finding requested by the JLA Parties that the Debtor "has engaged in persistent bad faith and deceit in this case" and "has made affirmative misrepresentations regarding assets of the estate." Doc. No. 65 at 7. Such an order would have no effect on creditors of the estate, and would serve only to provide the JLA Parties a litigation advantage in the ongoing State Court Action.

The Debtor argues that the JLA Claims have already been abandoned as a result of

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the second Report of No Distribution issued by the Trustee on November 15, 2018. The Court agrees with the UST that the second Report of No Distribution did not effectuate the abandonment of the JLA Claims, because at the time the Second Report of No Distribution was issued, the Trustee had not been reappointed. Having not been reappointed, the Trustee had no authority to issue the second Report of No Distribution, and the report was void *ab initio*.

Based upon the foregoing, the Court will prepare and enter an order (1) finding that the JLA Claims cannot be administered by the Trustee because they are related to a marijuana asset, (2) declining to make any findings regarding whether the JLA Claims are an asset of the estate or whether the JLA Claims have been abandoned, and (3) immediately closing the case.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR)

Pro Se

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2:20-14379 Petroleum Gas Station Maintenance and Construction

Chapter 7

#2.00 APPLICANT: Trustee - EDWARD M WOLKOWITZ

Hearing re [53] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/7/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Trustee's Fees: \$6,301.09 [*see* Doc. No. 52]

Total Trustee's Expenses: \$8.67 [*see id.*]

Attorney for Trustee Fees: Levene, Neale, Bender, Yoo & Golubchik LLP: \$19,171.50 [Doc. No. 48]

Attorney for Trustee Expenses: Levene, Neale, Bender, Yoo & Golubchik LLP: \$494.80 [*see id.*]

Accountant for Trustee Fees: LEA Accountancy LLP: \$ 12,455.00 [Doc. No. 49]

Accountant for Trustee Expenses: LEA Accountancy, LLP: \$249.91 [*see id.*]

Other: Expenses: State of California:\$ 1,621.97 [*see* Doc. No. 52]

No appearance is required if submitting on the court's tentative ruling. If you intend to

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CONT... Petroleum Gas Station Maintenance and Construction Chapter 7

submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

The chapter 7 trustee shall submit a conforming order within seven days of the hearing.

Party Information

Debtor(s):

Petroleum Gas Station Maintenance

Represented By
James R Selth

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Anthony A. Friedman

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Chapter 7

#3.00 APPLICANT: Attorney for Trustee - LEVENE NEALE BENDER YOO & GOLUBCHIK LLP

Hearing re [53] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/7/2022

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Petroleum Gas Station Maintenance

Represented By
James R Selth

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Anthony A. Friedman

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Chapter 7

#4.00 APPLICANT: Accountant for Trustee - LEA ACCOUNTANCY LLP

Hearing re [53] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/7/2022

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Petroleum Gas Station Maintenance

Represented By
James R Selth

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Anthony A. Friedman

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#5.00 APPLICANT: Other, Expenses - STATE OF CALIFORNIA

Hearing re [53] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/7/2022

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Petroleum Gas Station Maintenance

Represented By
James R Selth

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Anthony A. Friedman

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2:20-19033 Saul Ramirez and Florencia Ramirez

Chapter 7

#6.00 APPLICANT: Trustee - Peter J Mastan

Hearing re [40] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/7/2022

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No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Trustee's Fees: \$58.42 [*see* Doc. No. 39]

Total Trustee's Expenses: \$22.65 [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

The chapter 7 trustee shall submit a conforming order within seven days of the hearing.

Party Information

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CONT... Saul Ramirez and Florencia Ramirez

Chapter 7

Debtor(s):

Saul Ramirez

Represented By
Jaime A Cuevas Jr.

Joint Debtor(s):

Florencia Ramirez

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, June 8, 2022

Hearing Room 1568

10:00 AM

2:21-14762 Joyce A. Corbett

Chapter 7

#7.00 HearingRE: [37] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Notice of Motion and Motion to Approve Assignment Agreement Between The Trustee and Debtor for the Trustee's Conveyance of the Estate's Interest in (A) 2013 Ford Explorer and (B) 2012 Chevrolet Silverado; Memorandum of Points and Authorities; Declaration of Peter J. Mastan; and Exhibits with Proof of Service (Mastan (TR), Peter)

Docket 37

Tentative Ruling:

6/7/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Sale Motion is **GRANTED**. In the event any qualified overbidders are present, the Court will conduct the auction in accordance with the procedures set forth herein.

Key Sale Terms:

- 1) Proposed purchaser: Debtor Joyce A. Corbett
- 2) Property for sale: 2013 Ford Explorer and 2012 Chevrolet Silverado
- 3) Purchase price: \$17,825
- 4) Overbids: The initial overbid shall be \$19,000. Subsequent overbids shall be in increments of \$500, subject to adjustment by the Court to facilitate bidding. [**Note 1]**

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Approve Assignment Agreement Between the Trustee and Debtor for the Trustee's Conveyance of the Estate's Interest in (A) 2013 Ford Explorer and (B) 2012 Chevrolet Silverado [Doc. No. 37] (the "Sale Motion")
 - a) Notice of Hearing on Motion [Doc. No. 38]
 - b) Notice of Sale of Estate Property [Doc. No. 39]

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CONT... Joyce A. Corbett

Chapter 7

I. Facts and Summary of Pleadings

On June 9, 2021, Joyce A. Corbett (the "Debtor") filed a voluntary Chapter 7 petition. The Chapter 7 Trustee (the "Trustee") seeks authorization to sell the estate's interest in a 2013 Ford Explorer and 2012 Chevrolet Silverado to the Debtor for \$17,825. The sale is subject to overbids.

No opposition to the Sale Motion is on file.

II. Findings and Conclusions

A. The Court Grants the Sale Motion

Section 363(b) authorizes the sale of estate property out of the ordinary course of business, subject to court approval. The estate representative must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee is obligated to "collect and reduce to money the property of the estate" and "close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704(a)(1). The Court finds that the Trustee's decision to sell the 2013 Ford Explorer and 2012 Chevrolet Silverado to the Debtor for \$17,825 (consisting of a \$14,500 cash payment by the Debtor plus satisfaction of the Debtor's \$3,325 exemption in the Chevrolet) is an exercise of his reasonable business judgment.

Having reviewed the declaration of the Trustee in support of the Sale Motion, the Court finds that the Debtor is a good-faith purchaser entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether § 363(m) protections are warranted.

Notwithstanding Bankruptcy Rule 6004(h), the over approving the sale shall take effect immediately upon entry. Pursuant to Bankruptcy Rule 6004(f)(2), the Trustee is authorized to execute all documents and instruments necessary to effectuate the sale.

B. Auction Procedures

In the event that any qualified overbidders are present, the Court will conduct the auction in accordance with the following procedures. The initial overbid shall be \$19,000, with subsequent overbids to be in increments of \$500. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will

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announce each bid level; however, parties are free to submit bids in excess of the bid level announced by the Court. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction.

III. Conclusion

Based upon the foregoing, the Sale Motion is **GRANTED**. Within seven days of the hearing, the Trustee shall submit an order incorporating this tentative ruling by reference.

Note 1

The Trustee proposed that the initial overbid be set at \$18,825. The Court has adjusted the Trustee's proposed initial overbid from \$18,825 to \$19,000.

Party Information

Debtor(s):

Joyce A. Corbett

Represented By
James D. Hornbuckle

Trustee(s):

Peter J Mastan (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:21-17188 Nancy C Dunlap

Chapter 11

#8.00 HearingRE: [45] Motion for approval of chapter 11 disclosure statement

Docket 45

Tentative Ruling:

6/7/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Court (1) approves the Disclosure Statement as containing adequate information, and (2) authorizes the Debtor to continue to use cash collateral through and including **September 21, 2022**.

Pleadings Filed and Reviewed:

- 1) Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 44] (the "Disclosure Statement")
- 2) Notice of Motion and Motion for Order Approving Individual Debtor's Disclosure Statement in Support of Debtor's Plan of Reorganization [Doc. No. 45]
- 3) Order Granting Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral [Doc. No. 49]
- 4) Objection to Confirmation of Debtor's Chapter 11 Plan of Reorganization [Doc. No. 52]

I. Facts and Summary of Pleadings

On September 13, 2021 (the "Petition Date"), Nancy Dunlap (the "Debtor") filed a voluntary Chapter 11 petition. The Court authorized the Debtor's use of cash collateral by orders entered on October 21, 2021 [Doc. No. 19] (the "First Cash Collateral Order"), January 20, 2022 [Doc. No. 35] (the "Second Cash Collateral Order"), and April 20, 2022 [Doc. No. 47] (the "Third Cash Collateral Order"). In the Third Cash Collateral Order, the Court set this hearing to consider the Debtor's continued use of cash collateral. Doc. No. 49. No opposition to the continued use of cash collateral is on file.

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On April 13, 2022, the Debtor filed an *Individual Debtor's Chapter 11 Plan of Reorganization* [Doc. No. 43] (the "Plan") and corresponding *Individual Debtor's Disclosure Statement in Support of Plan of Reorganization* [Doc. No. 44] (the "Disclosure Statement").

U.S. Bank, National Association, in its capacity as trustee for Fidelity & Guaranty Life Mortgage Trust 2018-1, by and through its authorized loan servicing agent NewRez LLC dba Shellpoint Mortgage Servicing ("U.S. Bank") does not object to approval of the Disclosure Statement, but did file an objection asserting that Plan does not provide it a reasonable rate of interest. No other parties have objected to approval of the Disclosure Statement.

II. Findings of Fact and Conclusions of Law

A. The Debtor is Authorized to Continue to Use Cash Collateral Through and Including September 21, 2022

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of § 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368–69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. § 363(c)(2)(B) and (e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

No objection to the Debtor's continued use of cash collateral has been filed. The Debtor is authorized to continue to use cash collateral in accordance with the provisions of the Third Cash Collateral Order, through and including **September 21, 2022**. As set forth in Section II.B., below, the Court has set a hearing on confirmation of the Debtor's Plan (the "Confirmation Hearing") for **August 17, 2022**. To the extent that an order confirming the Plan has not been entered prior to **September 21, 2022**, the Debtor shall file a motion for further authorization to use cash collateral, and shall

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Chapter 11

set such motion for hearing on or before **September 21, 2022**.

B. The Disclosure Statement Contains Adequate Information

Section 1125 provides that a disclosure statement must contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, ... that would enable ... a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." §1125.

Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). As explained by one court:

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

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In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984).

However, "[d]isclosure of all factors is not necessary in every case." *Id.*

The Court finds that the Disclosure Statement contains information adequate to enable creditors to make an informed decision on the Plan. Among other things, the Disclosure Statement (1) describes the Debtor's assets and the values of the assets; (2) describes the sources of money earmarked to pay the Debtor's creditors; (3) estimates the estate's liability for administrative expenses and professional fees; and (4) contains information regarding who may object to confirmation of the Plan.

The opposition filed by U.S. Bank raises issues pertaining to the confirmability of the Plan, not to the adequacy of the information contained in the Disclosure Statement. The Court will consider U.S. Bank's opposition in connection with the confirmation hearing.

The following dates shall apply with respect to confirmation of the Plan:

- 1) A hearing on confirmation of the Plan (the "Confirmation Hearing") shall take place on **August 17, 2022 at 10:00 a.m.**
- 2) Pursuant to Bankruptcy Rule 3017, the Debtor shall serve the Disclosure Statement, the Plan, notice of the confirmation hearing, and a ballot conforming to Official Form No. 14 (collectively, the "Confirmation Package") upon interested parties, such that interested parties actually receive the Confirmation Package by no later than **June 17, 2022**.
- 3) The record date for purposes of determining the claimholders that are entitled to vote on the Plan shall be **June 10, 2022**.
- 4) **July 8, 2022** is fixed as the last day for creditors and equity security holders to return to Debtor's counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtor's counsel by 5:00 p.m. on such date.
- 5) **July 27, 2022** is fixed as the last day on which the Debtor must file and serve a motion for an order confirming the Plan (the "Confirmation Motion"), including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the Ballots, and setting forth evidence that the Debtor has complied with all the requirements for the confirmation of the Plan.
- 6) **August 3, 2022** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.

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Nancy C Dunlap

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- 7) **August 10, 2022** is fixed as the last day on which the Debtor may file and serve its reply to any opposition to the Confirmation Motion (the "Reply").
- 8) Parties may appear at the Confirmation Hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

III. Conclusion

Based upon the foregoing, the Court (1) approves the Disclosure Statement as containing adequate information, and (2) authorizes the Debtor to continue to use cash collateral through and including **September 21, 2022**. The Court will prepare and enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Nancy C Dunlap

Represented By
Onyinye N Anyama

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Wednesday, June 8, 2022

Hearing Room 1568

10:00 AM

2:21-17188 Nancy C Dunlap

Chapter 11

#9.00 Hearing
RE: [39] Motion to Use Cash Collateral

fr. 4-20-22

Docket 39

Tentative Ruling:

6/7/2022

See Cal. No. 8, above, incorporated in full by reference.

Party Information

Debtor(s):

Nancy C Dunlap

Represented By
Onyinye N Anyama

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Wednesday, June 8, 2022

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2:21-19219 DA & AR Hospice Care, Inc.

Chapter 11

#10.00 Hearing

RE: [46] Motion to strike May 4, 2022 Declaration of Attorney James Dumas in its Entirety Pursuant to Rules 12(f) and 11(b) of the Federal Rules of Civil Procedure and Rule 3.10 of the California Rules of Professional Conduct

fr. 5-11-22

Docket 46

***** VACATED *** REASON: CONTINUED 6-27-22 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

DA & AR Hospice Care, Inc.

Represented By
Michael E Reznick
Lawrence J Semenza
D Edward Hays

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:21-19219 DA & AR Hospice Care, Inc.

Chapter 11

#11.00 Show Cause Hearing [30] United States Trustee's Order To Show Cause: (1) Directing Michael E. Reznick And Yvette Hargrove-Brown To Personally Appear To Explain Why This Bankruptcy Was Not Filed In Bad Faith; (2) Why Michael E. Reznick Should Not Be Required To Disgorge All Fees Received Pursuant To 11 U.S.C. § 329; (3) Why Michael E. Reznick Should Not Be Referred To The Bankruptcy Court Attorney Disciplinary Panel For Filing A Fraudulent Bankruptcy Case; And (4) Why Yvette Hargrove-Brown Should Not Be Ordered To Pay The Subchapter V Trustees Fees Incurred In The Instant Case And Barred From Future Bankruptcy Filings.

Michael E. Reznick and Yvette Hargrove-Brown shall PERSONALLY APPEAR

FR. 4-6-22; 5-11-22

Docket 0

***** VACATED *** REASON: CONTINUED 6-27-22 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

DA & AR Hospice Care, Inc.

Represented By
Michael E Reznick

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, June 8, 2022

Hearing Room 1568

10:00 AM

2:22-11920 PWP Investments LLC

Chapter 11

#12.00 Show Cause Hearing RE: [9] Debtor shall appear and show cause, if any there be, why the above-captioned cause should not be dismissed, based upon the fact that Debtor is a corporation but is not represented by counsel

Docket 10

***** VACATED *** REASON: PER ORDER ENTERED 5-9-22**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

PWP Investments LLC

Pro Se

Trustee(s):

Susan K Seflin (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Wednesday, June 8, 2022

Hearing Room 1568

10:00 AM

2:22-11920 PWP Investments LLC

Chapter 11

#13.00 Status Hearing

RE: [1] Chapter 11 Subchapter V Voluntary Petition Non-Individual. Kim S.)
Additional attachment(s) added on 4/6/2022 (Collins, Kim S.).

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-9-22**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

PWP Investments LLC

Pro Se

Trustee(s):

Susan K Seflin (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:22-11920 PWP Investments LLC

Chapter 11

#14.00 HearingRE: [19] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 trustee . (Attachments: # 1 COS)(united states trustee (hy))

Docket 19

Tentative Ruling:

6/7/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the dismissal of the case will be subject to a 180-day bar against re-filing.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee [Doc. No. 19]
 - a) Notice of Motion to Dismiss [Doc. No. 21]
- 2) Notice of Motion and Motion to Dismiss Bankruptcy Case [Doc. No. 10]
- 3) No opposition is on file

I. Facts and Summary of Pleadings

On April 6, 2022, PWP Investments, LLC (the “Debtor”) filed a face-sheet voluntary Chapter 11 petition. The Debtor was not represented by counsel. On May 9, 2022, upon the motion of the Debtor, the Court dismissed the case. In view of the United States Trustee’s pending motion to dismiss the case with a 180-day bar against re-filing, the Court retained jurisdiction to determine whether the dismissal should be accompanied by a 180-day re-filing bar.

The Debtor has not filed any opposition to the imposition of a 180-day re-filing bar.

II. Findings of Fact and Conclusions of Law

The Court finds dismissal of the case with a 180-day bar against re-filing to be

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CONT... PWP Investments LLC

Chapter 11

appropriate. The Court finds that the Debtor sought bankruptcy protection in bad faith, without the intent of pursuing legitimate bankruptcy objectives. The following indicia of bad faith are present: (1) the petition was face-sheet filing; (2) the Debtor never filed all required schedules and case commencement documents; (3) the Debtor is a corporate entity but was not represented by counsel; (4) the Debtor sought dismissal of the case, shortly after it was filed, without any explanation of why it had sought bankruptcy protection in the first place; and (5) on June 1, 2022, the Debtor filed a second bankruptcy petition (Case No. 2:22-bk-13044-ER). The Debtor's filing of a second bankruptcy petition is particularly compelling evidence of bad faith, given that the second petition was filed shortly after the Debtor had requested dismissal of its first bankruptcy petition.

Imposition of a 180-day bar against re-filing is warranted where a Debtor files a petition in bad faith. *See In re Mitchell*, 357 B.R. 142, 157 (Bankr. C.D. Cal. 2006) (internal citation omitted) ("As its plain language suggests, § 349 gives a court authority to 'sanction a debtor for cause by imposing a bar against re-filing.'").

The Court will prepare and enter an order imposing a 180-day re-filing bar. Consistent with the order imposing the re-filing bar, the Court will also prepare and enter an order dismissing the Debtor's second bankruptcy petition, which was filed on June 1, 2022 (Case No. 2:22-bk-13044-ER).

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

PWP Investments LLC

Pro Se

Trustee(s):

Susan K Seflin (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, June 8, 2022

Hearing Room 1568

10:00 AM

2:22-12633 Indie Brewing, LLC

Chapter 11

#15.00 HearingRE: [7] Motion to Reject Lease or Executory Contract Motion to Reject Equipment Executory Contracts Under 11 U.S.C. 365 with proof of service

Docket 7

Tentative Ruling:

6/7/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

The counterparty to the unexpired leases that the Debtor seeks to reject—Keg Logistics, LLC ("KL")—is not listed on the Proof of Service. To provide an opportunity for the Debtor to properly serve KL, the hearing on the Motion is **CONTINUED to July 6, 2022 at 10:00 a.m.** By no later than **June 13, 2022**, Debtor shall provide notice of the Motion to KL, and shall file a proof of service so indicating. The Court will prepare and enter an order continuing the hearing on the Motion.

Party Information

Debtor(s):

Indie Brewing, LLC

Represented By
Michael S Kogan

**United States Bankruptcy Court
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Wednesday, June 8, 2022

Hearing Room 1568

10:00 AM

2:22-12836 Production Capital, LLC

Chapter 7

#16.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: a house located at 5916 S Village Drive, Los Angeles, CA, California 90094 .

Docket 7

Tentative Ruling:

6/7/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

The Court has entered an order setting this hearing on the *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* [Doc. No. 7] (the "RFS Motion") filed by 5916 S. Village Dr LLC ("Movant") on shortened notice. Doc. No. 13. Movant has provided notice of the hearing as ordered by the Court. Declaration of Lauren N. Gans Re: Notice of Hearing on Motion for Relief from the Automatic Stay on Shortened Notice [Doc. No. 16]. No timely opposition to the RFS Motion has been filed.

On May 20, 2022 (the "Petition Date"), Production Capital, LLC (the "Debtor") filed a face-sheet voluntary Chapter 7 petition. A final status conference in an unlawful detainer action involving the Debtor and several non-Debtor parties had been set for May 31, 2022.

The RFS Motion is **GRANTED** pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the Property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The RFS Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed.

Movant's request for an order authorizing a designated law enforcement officer to

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CONT... Production Capital, LLC

Chapter 7

evict the Debtor and any other occupant from the Property regardless of any future bankruptcy filing concerning the Property for a period of 180 days from the hearing on the RFS Motion, without further notice, is **DENIED**. Movant's request that the order be binding and effective in any bankruptcy case commenced by or against the Debtor or any other debtor claiming any interest in the Property for a period of 180 days from the hearing on the RFS Motion is **DENIED**. Movant's request that the order be binding in any other bankruptcy case purporting to affect the Property filed no later than two years after the date of the entry of the order is **DENIED**.

Notwithstanding Bankruptcy Rule 4001(a)(3), the order granting the RFS Motion shall take effect immediately upon entry.

Within seven days of the hearing, Movant shall submit a proposed order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Production Capital, LLC

Represented By

Richard L. Sturdevant

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:21-12812 Corporate Colocation Inc

Chapter 11

**#17.00 Show Cause Hearing re [251] Order Requiring The Debtor To Show Cause
Why The Case Should Not Be Dismissed Pursuant To § 1112(B)**

FR. 5-4-22; 5-17-22; 5-25-22

Docket 0

***** VACATED *** REASON: CONTINUED 8-3-22 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Corporate Colocation Inc

Represented By
Robert M Yaspan

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Wednesday, June 8, 2022

Hearing Room 1568

10:00 AM

2:21-12812 Corporate Colocation Inc

Chapter 11

#18.00 Hearing
RE: [269] Motion for Order Compelling Debtor to Surrender Nonresidential Real Property Pursuant to 11 U.S.C. §§ 365(d)(4) and 105(a), and Ordering Ancillary Relief Relating to Such Surrender; Declaration in Support Thereof

FR. 5-4-22; 5-17-22; 5-25-22

Docket 269

***** VACATED *** REASON: CONTINUED 8-3-22 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Corporate Colocation Inc

Represented By
Robert M Yaspan